

1 debate over whether a set of carriers that would like to use  
2 the UNE platform to serve businesses would be impaired if  
3 there was no UNE platform to serve businesses. You know,  
4 the answer to that is obviously yes.

5 MR. SCOTT: Except that we'd say it differently.  
6 I think there's a class of customer that would not get  
7 service because the carriers who target that would be  
8 impaired. And I think it's worth a very careful analysis of  
9 the distribution lines and the average line count between  
10 carriers such as Allegiance and Birch. You know, we don't  
11 cross paths much in the marketplace. That's an anecdotal  
12 statement, but I think 72 percent of our accounts are, as I  
13 said before, residential accounts or small business one, two  
14 and three lines. Our distribution is significantly  
15 different, and the bulk of our business is at the four-line  
16 and below. A five-line average versus a 10-line average is  
17 a completely different world.

18 MS. ATWOOD: But did that happen because of our  
19 rule? Or is your point --

20 MR. SCOTT: No, it didn't happen because --

21 MS. ATWOOD: So why isn't our rule not arbitrary?

22 MR. PHILLIPS: If a five-line and a 10-line  
23 average are completely different worlds, then why are you  
24 arguing that everything should be swept under the one- to  
25 20-line rubric?

1           MR. SCOTT: Well, again I'm arguing that there's a  
2 sector of the market. When you look at an Allegiance  
3 customer that has seven or eight lines -- which would be a  
4 small customer for Allegiance, it would be a large customer  
5 for ours -- there is no much competition in that sector of  
6 the market. And so, what we're looking at it the  
7 fundamental thing that makes the provisioning of a loop  
8 either economic or uneconomic, viable or not viable,  
9 impaired competition in that or not. If you said look, go  
10 in and build a business, and we will give you the platform  
11 from one to four lines, have fun, we would not go into a  
12 market. I can guarantee that we could not support the  
13 business based upon that.

14           We supported a business where the platform is  
15 unrestricted, because of the 271 process, with Southwestern  
16 Bell. That's the only reason UNE-P is viable at one, two  
17 and three lines. Because we have to be able to -- we can't  
18 just go in and serve those accounts. It's ridiculous.  
19 Those are difficult, low-margin accounts. We serve them  
20 because on an incremental basis, we do contribute to that,  
21 but we need to be able to use that methodology for a wider  
22 sector of the market.

23           MR. GILLAN: And that's consistent across all of  
24 our members that, fundamentally, they're in that four to 20  
25 range. Above that, customers are going digital. Below

1 that, I mean, they've got a lot of those customers and they  
2 can serve them, but they're concerned about their ability to  
3 broadly serve this market as customers grow, et cetera.

4 MR. HUNTER: And from the Ascent members' point of  
5 view, if you remember, Ascent members generally are smaller,  
6 even smaller than the Pace members, although I believe most  
7 of the Pace members are members, as well. The decision is  
8 when do you jump from resale to platform? And that's the  
9 only real choice that most of our members have. The switch  
10 just is not that viable an alternative for many of our  
11 folks. If it's a one-to-four, or a one-to-three, they don't  
12 make the jump, because there's a watershed --

13 MS. ATWOOD: But if they're in the market.

14 MR. HUNTER: Excuse me?

15 MS. ATWOOD: It means they're in the market.

16 MR. HUNTER: They're in the resale market.

17 Resale --

18 MS. ATWOOD: How is that -- how are you then  
19 impaired to be in the market if you have a resale entry?

20 MR. HUNTER: Because resale is dying, slowly but  
21 surely. The margins aren't there to support it. That's  
22 what we've been telling the Commission for a long time, that  
23 the margins do not support a viable operation. For our  
24 members to stay alive and to stay viable, UNE is their life  
25 raft. When our members move over -- and they've moved over

1 in ever increasing numbers in both New York and Texas --  
2 their operations which have been very marginal become viable  
3 operations, they start to grow, they start to expand.  
4 Absent the UNE platform, they slowly wither and die, and  
5 they are slowly withering and dying, because the margins for  
6 resale just do not support --

7 MR. GILLAN: Apart -- aside from the margins a  
8 little bit, the members of our group fundamentally have  
9 other types of innovations that they're either packaging,  
10 pricing or software or whatever that aren't  
11 resale-compatible. They wouldn't be able to offer the same  
12 vector of products. You know, basically, we have companies  
13 that are going in -- I'll give you a poster child example.  
14 They're serving the nuns that are running the hospice with  
15 12, 15 lines, okay? That type of customer is not going to  
16 be attracting --

17 MS. ATWOOD: We can't criticize the nuns. I mean,  
18 they're telling the truth.

19 (Laughter.)

20 MR. SHAKIN: What we are hearing, though, is okay,  
21 so they're in the market serving very small business with  
22 resale, but that's dying, so don't pay attention to that.  
23 And yeah, platform is not really being used primarily for  
24 business, it's really mostly residential, but don't pay  
25 attention to that.

1 (Multiple voices.)

2 MR. SHAKIN: Let me finish, okay, please. The  
3 point that you all made was, for you, it is, but for when  
4 you look at the broader statistics, it may not be. That was  
5 what I heard, at least. And that's a fair point. When you  
6 say my business model is, I'm using it for business. And I  
7 don't think any of us are disputing that. What we are  
8 disputing, though, is that when you look at an impairment  
9 analysis and you say, are you impaired from entering the  
10 market, could you enter the market when you see the resale  
11 entry, when you see facilities-based entry, when you see  
12 coming in, in different ways, and then you can dismiss them  
13 one by one by one by one, but eventually, you have to  
14 acknowledge that we're losing significant small business  
15 customers, not at the 20-line level but at the five-level,  
16 the four-line level. We're losing those to people other  
17 than you all. And so, someone isn't impaired.

18 MR. HUNTER: I keep hearing that you're losing  
19 tremendous business customers. I hear this continually, and  
20 it somewhat appalls me when I look at the stats. You know,  
21 we can throw around numbers of 100,000 here, 200,000 there.  
22 We are six -- four years after the enactment of the Act.  
23 We've got a 4-percent market penetration, of which 1 percent  
24 is loops. We can get -- we can lose the forest for the  
25 trees here. There isn't a lot of activity, and the activity

1 is there.

2 MS. ATWOOD: But that isn't the same as Bell  
3 South's --

4 MR. BANKS: I think even if you pick the really  
5 broad numbers, the box have lost roughly 5 percent of the  
6 market share. As you all know, the huge number of line  
7 customers is residential. Almost all of the CLEC market  
8 share we've lost has been in the small business segment.  
9 So, that 5 percent, you can multiply that by three, four or  
10 five to get the market share we've lost in the small  
11 business segment.

12 MR. SCOTT: Let me ask again, what is the small  
13 business segment defined as? I don't think I heard that  
14 clearly.

15 MR. BANKS: Well, I think we decided that no one's  
16 quite sure, but we could decide that the information that  
17 we've putting on the record lately, you can make your own  
18 distinction, you can draw the line at 10 or 20 or 50.

19 MR. SCOTT: But when you talk about these numbers,  
20 are we talking about \$100,000 a year and less? Is that  
21 generally the area?

22 MR. BANKS: We have a very high, probably compared  
23 to what you would think, threshold for defining what we see  
24 as small business. If you look through the information, you  
25 can lop off the top half, okay? That just makes the

1 percentages that we've lost higher.

2 MR. SCOTT: So, when we look at the information,  
3 we can go back and see what percentages have been lost, and  
4 you're saying that when we see that for one 10-line business  
5 customer or the sub \$5,000 a year customer, that your  
6 percentages are even higher for large businesses.

7 MR. BANKS: Yes. I mean, you know, we've been  
8 dismissing CLECs one by one, but one that does very well in  
9 our region is Nextel, and their single most popular package  
10 is a \$99 a month package for small business. And the people  
11 that buy that are not large businesses, and they're not  
12 medium-sized businesses. They're small businesses. This is  
13 \$99 for a local and LD and access.

14 MS. ATWOOD: Well, I guess my question then  
15 becomes are these isolated instances or are we talking about  
16 systematic? Because we have to assess whether there is --  
17 you know, if a few companies -- I'm just asking, if a few  
18 companies can enter a market, does that mean that there is  
19 no barrier for all companies to enter the market? And what  
20 I'm hearing you folks saying, it might be really useful if  
21 you spent some time going through, now that you've  
22 understood our clarification of the language that has you in  
23 it, if you would go back and look at ex parte, and I want to  
24 -- subject to confidentiality.

25 MR. GILLAN: Do we have a way of finding that?

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1     Because I have some other questions about that, and I know  
2     that our ability to evaluate that is limited without  
3     answers.

4             MS. ATWOOD: I would encourage that, because we  
5     really like to get our hands around, shortly, very fast, the  
6     kind of market we're talking about and the kind of loss in  
7     that market that that statistic shows, I think the Verizon  
8     statistics show that we're talking about a smaller  
9     percentage, which you have an explanation for in terms of  
10    overall platform. Can I just ask you what your view of what  
11    a small business is? That would help me. I mean, I realize  
12    we're talking about -- but it would help to understand, at  
13    least from the perspective we've been talking about, you  
14    guys. What's your company position on a small business?

15            MR. CROWNE: All of the stats that we've pulled  
16    together are basically in these lines, side segments, if you  
17    will. The buckets that you see on that chart on there.  
18    When we talk about the SMA marketplace, we're talking about  
19    customers with 25 lines or less, generally speaking. That  
20    can go higher, depending on the audience.

21            MS. ATWOOD: And you don't have any sense of how  
22    many of that 25 lines or less are people who are really 10  
23    lines or less.

24            MR. CROWNE: Yeah. That's what this chart does.

25            MR. GILLAN: 91 percent.



1 MR. CROWNE: Yeah. I mean, this is how we're  
2 viewing it right now.

3 MS. ATWOOD: Okay.

4 MR. CROWNE: Under 10 is 81 percent of the -- or  
5 91 percent.

6 MS. ATWOOD: And how do you -- you define it as a  
7 \$100,000.

8 MR. GILLAN: No. That was -- I made that up to  
9 try and protect his confidentiality, although think that  
10 that number is confidential.

11 MR. BANKS: Actually, we don't define it by line  
12 size, we do it by total billed revenue.

13 MR. TRINCHESE: And then how much the problem?

14 MR. BANKS: \$250,000.

15 MR. TRINCHESE: \$250,000.

16 MR. SCOTT: \$250,00. We view it by total bill  
17 revenue, as well, and our would be roughly \$3,000 even of  
18 \$250,000.

19 MS. ATWOOD: \$3,000?

20 MR. SCOTT: \$3,000. Yes.

21 MS. ATWOOD: There's a small business that  
22 survives at \$3,000?

23 MR. BANKS: This is expenditures on  
24 telecommunication services.

25 MR. SCOTT: Telecom expenditures of \$3,000 here

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1       versus a quarter million.

2               MS. ATWOOD:  Oh, right.  You're right.

3               MR. BANKS:  And let me just add that we did file  
4       an ex parte yesterday with some more line information.  
5       There are two --

6               MR. SCOTT:  And so our average count would be five  
7       lines generating about \$250 a month.  That's \$3,000 a year.  
8       You know, that's about 1 percent of the average spending is  
9       upper end small business -- small to medium-sized business  
10      customers.  See, we're talking apples and oranges.

11              MALE SPEAKER:  We've been trying to do it from the  
12      perspective of when does the impairment disappear, so --

13              MR. BANKS:  Let me just say, you know, it is the  
14      upper end, but the great majority of the customers in our  
15      small business segment are in the one- to 10-line group.  In  
16      other words --

17              MS. ATWOOD:  But still, you're talking about  
18      revenue now, and he's talking about \$3,000 in telecom.  Is  
19      that analogous to a one to ten --

20              MR. SCOTT:  Yeah, the great majority of the  
21      customers are just like Allegiance has said here, in the  
22      one- to 10-line group.  And that's the same for us.  Now, we  
23      just drew the ceiling really high, but, you know, if you  
24      take our ceiling and drop it, the fact that we've lost lots  
25      at the lower end is still true.

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1 MS. ATWOOD: And are your \$3,000 revenue --  
2 communications revenue, is that -- what number of lines are  
3 those?

4 MR. SCOTT: That's about five lines.

5 MS. ATWOOD: Five lines.

6 MR. SCOTT: Our average line count is just a  
7 little bit under five. We have relatively few that would be  
8 over the average of Allegiance. Ten and above would be a  
9 pretty small percentage of that. I would point out, though  
10 -- and I think this is an important comment -- for us to go  
11 into a market, you know, we really can't make it just on the  
12 lower end. It's an important part of our business, but it's  
13 important for us to be able to provide UNE-P across the  
14 entire sub-T-1 market, in order to generate enough market  
15 share to cover the fixed cost of being in business. So, I  
16 don't --

17 MS. ATWOOD: And what are you doing now?

18 MR. SCOTT: What are we doing now?

19 MS. ATWOOD: Um-hum.

20 MR. SCOTT: In terms of?

21 MS. ATWOOD: Well, capturing that additional  
22 market share.

23 MR. SCOTT: You know, I would say -- I'd have to  
24 go back and look at some specifics on that, but I would say  
25 about a third of our business would come from the upper end

1 of the market, you know, the five lines, six lines and  
2 above. About a third of the revenue stream for us. And  
3 given the fixed costs in the business, if you lop that off,  
4 we shut the door.

5 MS. ATWOOD: Well, it is lopped off, though, in  
6 top 50 in a sense.

7 MR. GILLAN: But not in the real world.

8 MR. SCOTT: Yeah, not in the real world of where  
9 we serve. We have access to the platform, again, as a  
10 state-level regulation. That's why this issue is so  
11 important. When we look at the economics of serving in the  
12 Bell South territory, it's a significant issue that we have  
13 to take even a fairly small area, under today's geographic  
14 limitation -- say, downtown Atlanta -- and strip out all  
15 that market. It may not look like a big thing cast against  
16 the entire metropolitan area, but it's a significant  
17 contributor to our business. But our operational plans do  
18 exactly that.

19 We don't have an alternative for providing service  
20 within that area, and we've chosen not to go in and sell a  
21 three-line customer that someday we would have to say I'm  
22 sorry, but we can't even give you a fourth line. That's the  
23 operational problem that we face. So, it makes the economic  
24 equation of going in and spending the fixed cost necessary  
25 to establish a position that serves broadly. And we serve

1 more broadly than anybody who has brought into the  
2 conversation. We're serving small and big markets in a  
3 state. We serve entire metro areas, not just downtown or  
4 not just 30 percent of the central offices.

5 But to make all of that work is a complicated  
6 equation, and the economics are incredibly compelling, even  
7 with the Zone-1 access for the above-three-line customers  
8 available under the platform. So, that's what we're talking  
9 about here. All these things are linked, much as you said  
10 in the decision over whether the loop was something that met  
11 the checklist was a fairly complicated thing, that we need  
12 to look at a lot of factors. The same for our market entry.

13 And so, I think it's dangerous to think that there  
14 can be some compromise here that would still generate the  
15 level of competition for those customers at the lower end of  
16 the market, because you'll be eroding the viability of those  
17 players who are going to serve the lower end of the market.

18 MR. PHILLIPS: I'd like to make a couple of  
19 points. I would agree with the comment that was previously  
20 made. I mean, to a certain extent, this seems to be a  
21 debate about the business strategy of a subgroup in the  
22 industry, and there can be no doubt that their business  
23 strategy is a UNE-P-based strategy, but that really is not  
24 the question that's before you. The question that's before  
25 you is, is the CLEC compared without access to the UNE-P?

1           And I want to make just two points about that.

2       One is, there are some facts that, I think, need to be  
3       brought to bear. Notwithstanding allusions to lack of  
4       access to capital, CLECs continue to deploy switches at a  
5       pace that is actually accelerating, based on the most recent  
6       data I could get, which is as of August 2000. This is LERT  
7       (phonetic) data. CLECs had deployed 1,330 switches. When  
8       you did the original UNE remand order, the data was for  
9       March of 1999, and it was 720. That means that CLECs are  
10      now deploying more than a switch a day.

11           Co-location. SBC has delivered 11,000 co-location  
12      arrangements. That's an average of 3.4 per wire center in  
13      its territory. In January through March of 1999, SBC and  
14      Ameritech combined were delivering 100 co-location  
15      arrangements a month. SBC is now delivering 700 a month.  
16      So, there is facilities-based deployment going on, and you  
17      have to ask a basic, common sense question. What are CLECs  
18      putting in all these switches for? And what are they  
19      putting in all these co-location arrangements for if they  
20      can't use that?

21           And I just want to make one other point, which is  
22      if you are a CLEC that is out there -- and there are. It's  
23      more than Allegiance, there are many -- that have  
24      facilities-based strategies for serving the small business  
25      market, the availability of the UNE-P does have an impact on

1 the rollout of facilities. If you're a CLEC and you've got  
2 a facilities-based strategy, you put in switches, you put in  
3 co-location arrangements and then you expand gradually. And  
4 when you decide whether or not to go into a new central  
5 office, you've got to look at the revenue potential from  
6 that office, and you have to decide whether you're going to  
7 be able to recover your costs. And that depends on how much  
8 business you can bring.

9 If the market is crowded with CLECs that are  
10 deploying the UNE-P, your market share projections are going  
11 to be lower. So, there is another factor to consider here,  
12 which is, you know, if you've got facilities-based CLECs,  
13 you, as a matter of public policy, ought to take steps that  
14 encourage those facilities-based CLECs to continue to deploy  
15 their facilities and roll them out.

16 MR. SCOTT: Now, the same argument could be used  
17 to attack the loop availability, and Time Warner Telecom  
18 would make that if they were here. The second issue is, the  
19 time period they chose --

20 MR. JONES: Excuse me, I actually represent Time  
21 Warner Telecom, and I don't think they would make that  
22 argument.

23 MR. SCOTT: Time Warner Telecom would not make  
24 the argument that allowing the UNE loop -- Allegiance goes  
25 in, doesn't have to build fiber to deploy to a building,

1 doesn't hurt their approach of building fiber directly to  
2 Omnet buildings? The same argument that you said --

3 MR. GILLAN: Time Warner Telecom has made that  
4 argument.

5 MR. PHILLIPS: Do you want to just address my  
6 argument on the merits and not by analogy. If you're a CLEC  
7 -- I mean, address it directly and on the merits instead of  
8 by analogy. If you're a CLEC --

9 MS. ATWOOD: No, Joe can you speak first.

10 MR. GILLAN: Yes. I want to talk a minute about  
11 the number of switches -- First of all, there's a question  
12 about the roll, "what does the word database measure?" And  
13 the LERT database is used for carrier routing purposes.  
14 There are clearly business strategies where carriers deploy  
15 switching devices that are used so that an ISP can get a  
16 broad footprint in an area, but which are not really  
17 intended to provide conventional services. They provide  
18 local services but not of the nature that we're talking  
19 about here, which goes, really, to the point. Simply  
20 because a switch is out there does not tell you what type of  
21 customers, what type of services, and even whether or not  
22 the strategy is viable.

23 When you look at all those switches, you have to  
24 ask are these voice over switches? Is that what it's  
25 designed for? If the CLECs were really still installing,



1     you know, however many switches -- what did you say 1,000?  
2     What was it?

3             MR. PHILLIPS: 1,330 is the total.

4             MR. GILLAN: How many a day?

5             MR. PHILLIPS: More than a switch a day.

6             MR. GILLAN: More than a switch a day. I think  
7     Lucent would be a lot happier this morning than it is.  
8     Okay? I mean, this is just not an accurate picture of  
9     what's going out there, because of the fact that you have  
10    the phenomenon of access servers and other switching devices  
11    that are being deployed. Look at the minutes. I mean, all  
12    of these stories, factually have to come back together  
13    again.

14            MS. ATWOOD: Right.

15            MR. GILLAN: If there are these switches out there  
16    and they're providing a service, then you should see a lot  
17    of minutes coming from CLECs and not just a lot of minutes  
18    going to them, which, even in great scheme of things, is a  
19    small number of minutes.

20            MR. CROWNE: It's not a great number of minutes,  
21    but I thought it was interesting he chose that. What was  
22    the first date you said? Was it March of '99?

23            MR. PHILLIPS: It was the date at which the  
24    comments -- the cut-off for filing comments for the original  
25    UNE remand. There was no -- there was nothing that was put

1 in the record in the original comment cycle.

2 MR. CROWNE: I'd warn anybody about using --

3 MR. PHILLIPS: There was nothing nefarious.

4 MR. TRINCHESE: You also have to understand --

5 MS. ATWOOD: And why would that be?

6 MR. CROWNE: I'd warn anybody.

7 MR. PHILLIPS: I think we had as of March '99.

8 MR. CROWNE: I'd warn anyway who tries use the  
9 LERTs (phonetic) to count the number of switch entities out  
10 there, because due to interconnection agreements, we've had  
11 to count -- some switch devices have to be entered in the  
12 LER multiple times. Because we tended to architect our  
13 switch networks with one switch that covers a wider  
14 geographic area.

15 MR. TRINCHESE: We understand that. And the way  
16 the data was gathered, it took all that into consideration,  
17 so we're pretty confident that the data that Gary's  
18 presenting here took all those issues into consideration.  
19 And whether there are 1,000 switches or 850, the fact is  
20 CLECs have switches, they have, in the Verizon territory  
21 alone, 8,300 NXX codes assigned to them, and they should be  
22 using them to provide local services. And if they're not,  
23 shame on them.

24 MR. CROWNE: Yeah. And I will tell you I tend to  
25 agree with him in that endeavor. Just be warned that strict

1 switch count isn't going to necessarily get to the  
2 conclusion. And also, whether that switch is physically  
3 located in one MSA or another is not going to get you to the  
4 answer if you're looking for a simple test as to whether  
5 there's competition in the market. You know, a switch is  
6 not -- sometimes there are little switches --

7 MS. ATWOOD: And that, in fact, is what the  
8 Commission rejected. But I think we did in the order talk  
9 about the presence of multiple evidence of CLEC competition,  
10 and switches were one of the things we looked at.

11 MR. CROWNE: And it's quite obvious, if there are,  
12 you know, half a dozen NXX codes taken by competitors, then  
13 there ought to be a half a dozen NXX codes in that rate  
14 zone.

15 MS. ATWOOD: Can you guys help us, though, in  
16 terms of the record that they're presenting. I mean, you  
17 fundamentally challenge the notion of a level of competition  
18 in these regions. Is there evidence that you can point to  
19 apart from the useful study that you did with respect to the  
20 decision of a CLEC in when to employ its own facilities? Is  
21 there any evidence you would have us look to that would help  
22 us understand demonstrably the level of CLEC activity or  
23 lack thereof?

24 MR. GILLAN: Well, to tell you the truth, it would  
25 seem to me that when you look where UNE-P is available --

1 really available, not like just came on the market or  
2 whatever -- Texas and New York, when you look at that much  
3 competition and you look at places where it isn't, you going  
4 to see this giant difference. The difference -- that's the  
5 impairment. The difference between what can be and what  
6 happens without it.

7 MS. ATWOOD: But why isn't that also provisioning?  
8 Because, I mean, part of --

9 MR. GILLAN: It's the cumulative effect of all  
10 those --

11 MS. ATWOOD: Well, couldn't you also make the  
12 argument that what you're seeing in Texas and in New York is  
13 the fact that in Texas and New York, the provision --  
14 they've worked the kinks out of hot cuts and they've worked  
15 the kinks out of the provisioning process.

16 MR. GILLAN: I don't think that their provisioning  
17 of loops is all that different in their states from other  
18 places. It's the --

19 MS. ATWOOD: How?

20 MR. GILLAN: I mean, I haven't looked at that  
21 question, but I don't know that that's the --

22 MS. ATWOOD: I think there would be people who  
23 would disagree with you on that.

24 MR. GILLAN: I'm not sure I could find anyone  
25 who's happy with anything, but I'm not sure what the

1 difference in the loop is, okay? But I know that -- what  
2 does UNE-P -- you have volumes of orders that -- I mean, all  
3 these companies that we talk to, they don't even look at  
4 states that don't have UNE-P. And can only give you a  
5 warning about this. This table -- I'm sure it's accurate,  
6 because there is an existence in the marketplace is that  
7 there are more customers with few lines than there are  
8 customers with multiple lines, but if you did this chart on  
9 the number of lines that fell in these categories, it would  
10 be very different. We see a gap --

11 MR. BANKS: That suggests it would be even easier,  
12 then.

13 MR. GILLAN: If it's so easy, compete against  
14 these guys, okay? If you really think this is so easy, go  
15 compete against them. You guys, come over here. I want to  
16 see you.

17 (Laughter.)

18 MR. TRINCHESE: The interesting point is that this  
19 appears to be coming down to an argument -- as far as I'm  
20 concerned, are you impaired to be able to take a one, two or  
21 three business line customer if you have a switch and you  
22 have a co-location? And can you switch them over to your  
23 switch?

24 MR. CROWNE: Yes.

25 MR. TRINCHESE: And that's what the answer is.

1 It's not the digital divide, it's not T-1. It's that the  
2 question is, I have a customer with two lines. You said the  
3 majority of your market was one, two or three-line  
4 customers?

5 MR. CROWNE: Yes, I can.

6 MR. GILLAN: But that's only because the majority  
7 of the market is down there.

8 MR. TRINCHESE: Excuse me? No. One-, two- or  
9 three-line customers, year to date Verizon, year to date,  
10 January to yesterday, 300,000 hot cuts in the Verizon  
11 territory. Of those 300,000 hot cuts, 80 percent of the  
12 orders to those 300,000 hot cuts were for three lines or  
13 less. So, people are competing on a facility basis with  
14 their own switches.

15 MS. ATWOOD: But now, you said when he said the  
16 question is, you said yes, but I thought your position is  
17 you're not impaired.

18 MR. CROWNE: No, he said "can you." And I said,  
19 yes you can.

20 MS. ATWOOD: Oh, I'm sorry. And you said yes.  
21 Okay. I misunderstood.

22 MR. TRINCHESE: 300,000 hot cuts.

23 MS. ATWOOD: Can I ask you, though, you're saying  
24 that the majority of the market is down at three and four,  
25 but as I understand your testimony, what you're saying is

1     yeah, that may be what we're doing now, but what we really  
2     want to do is we want to ramp up.

3             MR. SCOTT: No, that's not what I'm saying. I'm  
4     saying that we have a distribution of customers that  
5     averages five, and if you looked at the account of similar,  
6     to kind of the Allegiance covers, a large number of accounts  
7     at the lower end -- about two thirds of the lines are below  
8     average, about one-third is a little bit higher, distributed  
9     across that. And we're providing service to them today.  
10    It's not a desire to move up-market, it's the economic fact  
11    that to do business in the market, you need to serve across  
12    that spectrum to float the whole boat. I mean, you pull  
13    this part out, it doesn't work, you pull this part out, it  
14    doesn't work, but they work together.

15            We're providing a service, we're providing service  
16    to -- and you see the distribution -- that would be a  
17    significant number, five line, six line, seven line. And  
18    then, when you get up to eight, nine or 10, it starts to  
19    drop off a lot. And at about 10 to 15, there would be some  
20    amount. Above 15, very little.

21            MR. CROWNE: This chart doesn't show it  
22    separately, but I can tell you that 31.9 percent of our  
23    customers have one or two lines. They're below --

24            MR. TRINCHESE: And those are on facilities you  
25    take and provide your own switching.

1 MR. CROWNE: Absolutely.

2 MS. ATWOOD: Can I just ask, because we're running  
3 out of time. I need everybody to be able to wrap up,  
4 because I want to make sure. I know everyone will get  
5 frustrated and probably are already not getting as much time  
6 as they wanted, but if we could just have -- and I don't  
7 think you guys get to do every single one of your visits,  
8 only one of them or two. So, if you could just wrap up kind  
9 of where you think the Commission ought to be looking,  
10 having the benefit of listening to this in just a couple  
11 minutes.

12 MR. SHAKIN: Sure. I guess what we're seeing is a  
13 few things. We put facts on the record showing what kinds  
14 of losses we're seeing in the small business market. And  
15 then I -- and this discussion -- when I talk about the small  
16 business, I'm not defining it based on any particular  
17 criteria, other than what's in this debate, which is really  
18 the less-than-four-lines that we're trying to move the  
19 current limitation to -- the biz-res split -- and slightly  
20 above that, that they're trying to move it above. And what  
21 we're seeing is that we've got significant customer losses  
22 in that we're seeing that where we do offer UNE-P, it's  
23 being used for residential service.

24 They pointed to the difference between what's  
25 going on in Texas and New York. Our experience is -- and I



1 think the Commission has seen some of this too -- is that  
2 when 271s are granted, there's actually a spur in local  
3 competition, based on the availability of long distance.  
4 So, I'm not sure you can point to the data he's pointing to.  
5 But what we're seeing is tremendous losses in these  
6 customers, and not to the platform. So, there's someone out  
7 there who's doing it.

8           And then, we're seeing a group of companies coming  
9 out and saying yeah, it's me, it's me, I'm doing it and it  
10 works fine and thank you very much, I don't need the UNE-P  
11 for this. And then, we're seeing a group of companies that  
12 say, but I do. And the question before the Commission is  
13 are those companies that say I do truly impaired under the  
14 Act, and the answer has to be no. If there are companies  
15 out there succeeding -- and the combination of our own  
16 records of what we're losing and the testimony of companies  
17 coming in saying, yes, we're doing it and doing it in a way  
18 that doesn't involve UNE-P and the fact that it really  
19 wasn't available in most places when most of these losses  
20 were going on says that, clearly, companies can do it.

21           And then, the question is does the fact that a  
22 company that has a business model that says no, it doesn't  
23 work for us, what we really want to do is provide digital  
24 service above a certain level and analog service through  
25 UNE-P below a certain level. And I believe they said at one

1 point that even if we have a switch there, we wouldn't use  
2 it to those customers. Well, that's fine, but that can't be  
3 the basis for the Commission decision. The Commission  
4 decision has to be are those companies impaired? And the  
5 fact that there are multiple companies out there doing it,  
6 the fact that there are significant business losses out  
7 there says that they can't be impaired and that the  
8 Commission really has to move to something that recognizes  
9 the realities of the market.

10 MR. GILLAN: I guess I also say that the  
11 Commission has to recognize the realities of the market, but  
12 the reality also includes scale and context, not exception  
13 and isolated experience. Five years -- almost five years  
14 into the Act as passed, and you have competition at a level  
15 that's just barely floating around 1 or 2 percent. We have  
16 brought to you a variety of entrants who could not exist  
17 until UNE-P was available, to show you the types of  
18 innovations they have brought to the market and the types of  
19 customers they have made better off by their presence. And  
20 yes, they have some customers in one to three, but there's  
21 this whole other gap that they provide services to, and as a  
22 practical matter, they need the ability to serve the entire  
23 spectrum to survive.

24 Now, there are other carriers out there that have  
25 a whole bunch of UNE-P orders and that serve only

1 residential, but I don't think that you should pin the  
2 future of competition on them maintaining interest in that  
3 particular market, without other people coming in and being  
4 able to innovate and provide services. UNE-P will get you a  
5 lot more competition and it will get you price competition,  
6 because, for whatever amount of losses Bell South says  
7 they're experiencing, it evidently hasn't been enough to  
8 cause them to lower their business rate. And that's --  
9 whatever kind of competition you want to see, I would think  
10 you'd want to see it to a level where you actually see  
11 pricing responses by the incumbent instead of just chugging  
12 along.

13 We think we've proven to you an impairment. We  
14 think we've identified what it is -- the analog. And we  
15 think we can even tell you when it's going to start  
16 disappearing as new technologies come in and people start  
17 this very slow process of replacing a network that was built  
18 over the last hundred years. But that process is going to  
19 take a long time and it's going to require more than just  
20 Allegiance, and it's going to require more than people  
21 charging high access rates while this little window IXC  
22 (phonetic) still being around to pay them exists, it's going  
23 to require a lot of players coming in trying a lot of  
24 different things. And this is the way we see it happening.

25 MR. SCOTT: And I guess I would suggest that we

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1 not -- I'm not going to reiterate the points that were made,  
2 but I'm going to give a suggestion. We've got kind of an  
3 interesting situation, where two companies that serve a  
4 lower end of the market are saying the exact opposite thing.  
5 And so, I guess I'd kind of cancel us out. But there are a  
6 lot of folks here in the industry who do serve the five- to  
7 10-line customer, like McCloud and others, who I think need  
8 to weigh in, in this debate. It's represented somewhat by  
9 these coalitions, but I'd recommend getting a broader survey  
10 of that.

11 And frankly, I think that information on the  
12 record from companies like Time Warner Telecom, who serves  
13 48 lines per account, that's not a relevant discussion of  
14 whether, you know, competition is really flourishing. We've  
15 kind of got Allegiance and Birch saying the opposite thing  
16 here, but there are a ton of folks in this industry who are  
17 trying to go after this market who aren't in this room  
18 today, and I'd really encourage you to get their point of  
19 view. Because I think as they see how difficult it is to  
20 grow the business today under the current rules, state by  
21 state, and see what the platform is able to do, you see the  
22 business strategies shifting as these companies struggle to  
23 survive in the public markets and struggle to bring down the  
24 financing necessary for there to be competition.

25 But when I step back from this, I kind of look at

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1     what's going on in the world around us, and it's hard to buy  
2     into this view that competition is flourishing and going  
3     with the current rules, flourishing in a market and ripping  
4     large amounts of market share away from the incumbents  
5     across the board, that macro trends out there just don't  
6     seem to link up to that. And I'd really encourage you to  
7     not listen to us all throw out market numbers here, but take  
8     a much more diligent view of understanding how many  
9     customers are lost, let's make sure that we sync up on the  
10    definitions that we're using for small business. But this  
11    is a pretty critical decision for a lot of us out here.

12           MR. BANKS: Yeah. I would just echo that, that a  
13    fact-based approach is a good one, and looking at the actual  
14    market share loss is a sensible -- and you can take some  
15    number, you know, Box (phonetic) have lost 1 or 2 percent,  
16    but I think the latest FCC survey said 5 percent. And I  
17    think that's true in the gross amount, but all of those  
18    lines are in the small business market, and the losses are  
19    very much higher there. And I think if you do --

20           MS. ATWOOD: You two are going to talk offline  
21    to --

22           MR. BANKS: Yeah, but you can -- there are more  
23    carriers than just the weak ones that are successful at  
24    this. There's Nextel and Entel in our region, so, I think  
25    trying to get actual numbers isn't the way to go. Let me

1 just bring in one other thing, which is when we do hot cuts  
2 in our region, last month, throughout the region, the  
3 average number of lines per order was just over three. So,  
4 when people ask us to cut lines, they ask us to cut three  
5 lines at a time and serve smaller business customers, as  
6 anyone would define it.

7 MR. CROWNE: You know, I can only speak for  
8 Allegiance, obviously. We've been very successful with this  
9 boot cut strategy, so, we're not using -- we don't have any  
10 secret sauce or anything like that. We have helped define  
11 some of the processes, but, none of that's proprietary. My  
12 only observation would be more on a personal basis, which is  
13 it seems to me we've framed kind of where the debate is, and  
14 that you should be able to collect the facts that you need  
15 to decide whether or not competition exists. In as much as  
16 I don't like the test of the count of switches in a city --  
17 I don't think that's valid -- I think there's other obvious  
18 tests and questions and data that you can collect. And I  
19 think that data exists. It seems to me a fairly  
20 straightforward way of getting to the facts.

21 MS. ATWOOD: Well, that's a positive note, a  
22 straightforward way of getting to the facts. This has been  
23 really, really helpful, because I think it's helped me  
24 understand where the rough points are and what your  
25 positions are. I mean, it really has been very helpful. We

1 will no doubt be in touch with you. We are working on this  
2 as a fast-track to try to bring this to a close, and so, to  
3 the extent that we ask you for additional information after  
4 we caucus, I would encourage you to give it to us as quickly  
5 as you can. I know we're coming into the holiday time, but  
6 it's really important, because we have got to resolve this  
7 issue very soon.

8               So, to the extent that there are things that you  
9 can -- after you go back and think of things that would be  
10 helpful to us, as well, we'd really appreciate it. Thanks a  
11 lot.

12               (Whereupon, at 4:00 p.m., the hearing in the  
13 above-entitled matter was adjourned.)

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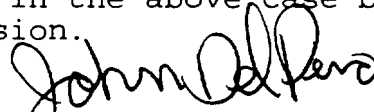
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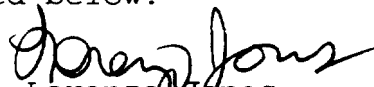
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